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In the Supreme Court of the United States

OCTOBER TERM, 1944

LOUIS DABNEY SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On April 29, 1944, petitioner was released from the Army pursuant to a writ of habeas corpus issued by the United States District Court for the Eastern District of South Carolina on the ground that he had been unlawfully inducted into the Army on September 30, 1943 (see *infra*, pp. 3-4). Thereafter, in November 1944, he was indicted in that court in one count charging that he failed to report for induction on September 30, 1943, as ordered by his local board, in violation of Section 11 of the Selective Training and Service Act (50 U. S. C. App. 311) (R. 2-3). He was convicted by a jury (R. 41) and was sen-

tenced to imprisonment for three years and six months (R. 1).¹ Upon appeal to the Circuit Court of Appeals for the Fourth Circuit the judgment was affirmed (R. 60-68).

The facts may be summarized as follows:

Having been classified I-A (available for military service) by the Selective Service System (R. 7), petitioner, on September 18, 1943, was ordered by his local board to report for induction (R. 6). The order (R. 43-44) directed petitioner to report to his local board at Columbia, South Carolina, at 8:30 a. m. on September 30, 1943, and it recited that the local board would furnish transportation to an induction station, where petitioner would be examined and, if accepted, inducted. Petitioner testified that he received the order (R. 20, 50) and that he had no intention of complying with it (R. 20, 23, 51). Petitioner's father knew that he intended to disobey the board's order, so he hired a local magistrate and two of his deputies to take petitioner to the induction station on September 30 (R. 21-23). On the morning of September 30 it was petitioner's admitted intention to disregard the order of his local board and, instead, to surrender himself to the United States Commis-

¹ This sentence is subject to the special parole provisions contained in Section 10 (a) (6) of the Selective Training and Service Act (50 U. S. C. App. 310 (a) (6)) and Executive Order 8641 (6 Fed. Reg. 563), pursuant to which the Attorney General is authorized to parole any person convicted for violation of the Act, either to the armed forces or to a Civilian Public Service Camp.

sioner (R. 20, 50). Some time between 8:00 and 9:00 o'clock that morning (see R. 13, 21, 54-55), petitioner was in his home shaving (R. 11) when the three officers hired by his father appeared and by a show of force compelled him to accompany them to the induction station (R. 11-12). Petitioner was given a physical examination and was then asked to state his preference as between service in the Army or Navy (R. 14-15). He testified, "I replied that I chose neither, that I was a minister of the Gospel and I was exempted from military service" (R. 15); "I explained that I was brought out there against my will, and I explained that I was a minister and could not be inducted into the Army" (R. 15). Petitioner told the authorities at the induction station that he "wanted to be released" (R. 16). Although he refused to undergo the induction ceremony (R. 16), he was told that he was in the Army and was given a three-week furlough (R. 16-17). He reported back at the conclusion of the furlough (R. 17), but upon his refusal to wear the uniform of a soldier, he was court-martialed and sentenced to imprisonment for twenty-five years (R. 18-19).

On December 9, 1943, prior to the court-martial proceeding, a petition for a writ of habeas corpus was filed in the United States District Court for the Eastern District of South Carolina, seeking petitioner's release from the Army on the ground that he had been forcibly inducted over his objection and that, as a Jehovah's Witness, he was a

minister of religion and had been arbitrarily denied exemption as such by the Selective Service System. The writ issued, a hearing was had, and the court thereafter entered an order denying the petition. Petitioner appealed to the Circuit Court of Appeals for the Fourth Circuit and, while that appeal was pending, this Court rendered its decision in *Billings v. Truesdell*, 321 U. S. 542. In conformity with that decision, the respondent consented to reversal of the judgment of the district court and petitioner was thereafter released from military custody.²

The district court's opinion in the habeas corpus case (see also Pet. 6) states that on January 29, 1943, petitioner filed his questionnaire with his local board, claiming that he was a conscientious objector and a minister of religion, but that he later withdrew the claim that he was a conscientious objector. In the questionnaire petitioner stated that he was then 18 years of age, that he was a student at the University of South Carolina, majoring in engineering, and that he intended to take an examination for a license in engineering. He also stated that he had been a minister of religion since 1938, when he was 13 or 14 years of age. The opinion further states that

² These facts as to the disposition of the appeal appear from the order of the district court, entered upon the mandate of the circuit court of appeals, discharging petitioner from military custody. The text of that order is set forth in the Appendix, *infra*, pp. 9-10.

petitioner had been given several hearings before the local board, that the board members had no prejudice against him or his religious sect, and that full consideration was given his evidence. (See *Smith v. Richart*, 53 F. Supp. 582; Pet. 8-9; R. 19.)

Petitioner urges here (Pet. 12-17, 20-31), as he did in the circuit court of appeals (see R. 62-63), (1) that he was kidnapped and falsely imprisoned at the time he was required to report to the local board for transportation to the induction station and that it was therefore impossible for him to report to the board; and (2) that because his abductors took him to the induction station he must be treated as having reported for induction in compliance with the order of the local board.³ As

³ Compare, however, the following statement in petitioner's brief in the district court in the habeas corpus proceeding:

"It was amply proved that he [petitioner] was carried to the induction station under compulsion by three men, at least one of whom was armed. The father of the boy admitted that the abduction was 'arranged by him.' There is no question but that he did not go of his own accord.

"He was ordered by the local board to report to the board to be sent to the induction station for induction. He did not report but was carried directly to the induction station by armed men at the instance of his father and delivered to the military authorities.

"That illegal action was jurisdictional and rendered all subsequent proceedings void. The law itself provides in Section 11 the penalty for failure to report, the penalty being, not forcible delivery or induction, but trial in the district court. That is all that can be done. * * *

we have shown, petitioner secured his release from the Army on the ground that he chose to defy the order of the local board and to subject himself to prosecution in the civil courts rather than submit to induction. We believe that the lack of merit in his present contentions is clearly demonstrated by the opinion of the court below. That opinion fully discusses petitioner's arguments (R. 61-63) and shows beyond question that petitioner did not in fact report for induction, and that the acts of the magistrate and his deputies bore no proximate relation to petitioner's failure to comply with the order of the local board, but instead made it possible for him to comply by submitting to induction. Accordingly, we deem it unnecessary to reargue in this memorandum the various considerations which the court below advanced in support of its judgment.*

* Petitioner's contention (Pet. 15-17) that he was entitled collaterally to attack his Selective Service classification as a defense in the criminal prosecution for failure to report for induction, is substantially the same as the argument urged by petitioner's counsel upon petitions for writs of certiorari in *Flakowicz v. United States*, No. 1072, and *Rinko v. United States*, No. 1071, certiorari denied, April 30, 1945. For the Government's argument in opposition to the contention that the Selective Service classification may be collaterally challenged in the criminal trial, the Court is respectfully referred to our briefs in those cases. In any event, as the circuit court of appeals pointed out (R. 67), petitioner tendered nothing to show that the classifying agencies of the Selective Service System transcended their jurisdiction or acted arbitrarily or unreasonably in classifying petitioner I-A.

Petitioner also urges (Pet. 32-33) that "the trial court erred in charging the jury that petitioner's appearance at the induction station and acceptance by the armed forces, as well as petitioner's contentions that he was falsely imprisoned, were immaterial and in refusing the requested charges which properly presented these issues to the jury." He cites no supporting record references (see Rules 27 and 38 of the Rules of this Court), and our examination of the court's charge (R. 28-41) reveals no such defect in it. Rather, the charge fully and fairly covered the issues in the case. Not only did the court not give the instructions which petitioner contends were erroneous, but also the court specifically instructed the jury in the manner in which petitioner claims it should have. In this respect the court instructed the jury (R. 32):

Now, something has been said in this case about the defendant being restrained. I charge you that a person who is required to do something, if he is prevented from doing that through no fault of his own, if some outside force which he cannot control intervenes to prevent him from performing his duty, that would be a good defense so long as the restraint exists, but it would not relieve of the duty and responsibility of performing said duty when the restraint was removed.

Now, it is a question of fact for you in view of all of the testimony in this case,

the testimony of the defendant and the testimony of the other witnesses, as to whether or not any physical restraint had anything to do with his not reporting for induction.

In other words, if it is my duty to go down in front of this Court House at a given hour, and before and at the time it is my duty to go I have no intention of doing so and would not do so, the mere fact that somebody may have laid hands on me and held me temporarily might have nothing in the world to do with my absence in front of the Court House where I was supposed to go, but if it did, if I decided that I would not go, and then changed my mind and decided I would go, then my duty called me there as soon as that restraint was removed.

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

HUGH B. COX,
Acting Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT S. ERDAHL,
IRVING S. SHAPIRO,

Attorneys.

MAY 1945.

APPENDIX

In the United States District Court for the Eastern District of South Carolina, Columbia Division

Order C. A. 1100

LILA SMITH, PETITIONER,

v.

D. G. RICHART, AS COLONEL UNITED STATES ARMY
AND COMMANDING OFFICER OF FORT JACKSON,
RESPONDENT

This case comes on for further proceedings in accordance with the mandate of the United States Circuit Court of Appeals for the Fourth Circuit, reversing the judgment of this Court by agreement of the parties, because the case comes within the rule announced by the United States Supreme Court in its decision filed March 27, 1944, reversing the judgment of the Tenth Circuit Court of Appeals in the case of Arthur Goodwyn Billings v. Karl Truesdell, etc., filed after the judgment of this Court had been rendered on February 1, 1944. Now, therefore, in accordance with the foregoing,

It is ordered and adjudged as follows:

1. That the petition for writ of habeas corpus filed by the petitioner to obtain the release of Louis Dabney Smith, Jr. from the military stockade at Fort Jackson, South Carolina, be and the same is hereby granted upon the ground that he is not now subject to military law, and the said

court martial proceedings against him are therefore null and void for lack of jurisdiction.

2. That the imprisonment and detention of the said Louis Dabney Smith, Jr. by the respondent herein is illegal and without authority of law, and he is hereby ordered to be released and discharged therefrom.

(Signed) C. C. WYCHE,
United States District Judge.

Dated: Spartanburg, S. C., April 29, 1944.